

REGULATION

Appointing Authority Letter Reference: CS-6940	Effective Date: March 18, 2001	Index Reference: ERB Appeal Procedures	Regulation Number: 8.05
Issuing Bureau: Executive	Rule Reference: Rules 1-15 (Employment Relations Board) 8-7 (Appeal to Civil Service Commission)		Replaces: Reg. 2.05 (CS-6454, January 13, 1984)
Subject: EMPLOYMENT RELATIONS BOARD APPEAL PROCEDURES			

Table of Contents

1. PURPOSE.....	2
2. CIVIL SERVICE COMMISSION RULE REFERENCES	2
3. DEFINITIONS.....	3
4. STANDARDS AND PROCEDURES.....	5
A. Appellate Jurisdiction of Employment Relations Board.....	5
B. General Procedure	6
C. Appeal as of Right	9
D. Application for Leave to Appeal	11
E. Summary Dismissal of Claim of Appeal or Application for Leave to Appeal.....	13
F. Consideration of Application for Leave to Appeal.....	14
G. Board Procedure after Grant of Leave to Appeal.....	15
H. Extensions of Time.....	17
I. Effect of Filing Claim or Application	18
J. Special Procedures	21
K. Relief.....	22
L. Record.....	22
M. Supplementing the Record and New Evidence.....	24
N. Dismissal of Appeals	25
O. Oral Argument	26
P. Recommendations	27
Q. Post-Decision Procedures	29

1. PURPOSE

This regulation establishes standards and procedures to be used when appealing a decision to the Civil Service Commission through the Employment Relations Board.

2. CIVIL SERVICE RULE REFERENCES

Rule 1-15: Employment Relations Board

1-15.1 Employment Relations Board.

The civil service commission shall appoint an employment relations board consisting of three unclassified members who shall be compensated on a per diem basis, as determined by the commission. The commission shall designate one of the members as the chair of the board.

1-15.2 Term of Office.

The members shall be appointed to staggered terms of three years each and shall serve at the pleasure of the civil service commission. A person appointed to fill a vacancy on the board shall be appointed only for the unexpired term. All terms of office shall expire May 1 in the year of expiration. A member may be reappointed.

1-15.3 Quorum and Action.

Two members of the board shall constitute a quorum. The board shall act by a vote of a majority of a quorum. If a quorum consists of only two members and they cannot agree, the board shall not act but shall forward the matter to the civil service commission with the separate recommendation of each member.

1-15.4 Duties.

The employment relations board shall have the following duties:

- (a) Review all appeals of right to the civil service commission and recommend final action to the commission.*
- (b) Review all applications for leave to appeal to the civil service commission and recommend the grant or denial of leave to appeal. If the board recommends granting the application, the board shall not refer that recommendation to the commission until after the board has considered the appeal on its merits and has issued a final recommendation on the merits of the appeal.*
- (c) Serve as the members of any impasse panel or coordinated compensation panel. However, the board instead may appoint one of its own members or one or more other persons to serve as the panel.*

- (d) *Review all other matters referred to it by the civil service commission or the state personnel director.*
- (e) *Recommend to the state personnel director regulations governing board procedures.*

1-15.5 Final Action by the Commission.

The employment relations board shall file its final recommendations with the civil service commission. After reviewing the board's recommendations, the commission shall issue a final decision in the matter. The commission may approve, reject, or modify, in whole or in part, the board's recommendations. If the commission rejects, in whole or in part, the board's recommendations, the commission may (1) remand the matter to the board or other officer for further action, (2) issue a final judgment or decision that rejects or modifies the recommendation of the board, or (3) exercise any other power of the board or commission.

3. DEFINITIONS

A. Definitions in the Civil Service Commission Rules

- 1. Adjudicating officer** *means the state personnel director or other civil service administrative officer, technical review officer, hearing officer, arbitrator, or other officer authorized to make a decision reviewable by the civil service commission.*
- 2. Administrative officer** *means the state personnel director or a person authorized by the state personnel director to take administrative action on matters filed with the department of civil service or the civil service commission.*
- 3. Board** *means the employment relations board.*
- 4. Commission** *means the Michigan civil service commission.*
- 5. Good cause** *means an acceptable excuse for failing to file or take other required action timely. Good cause does not include a person's own carelessness, negligence, or inattention to the filing or other requirements.*
- 6. Hearing officer** *means a person authorized by the state personnel director to administer oaths and conduct hearings as provided in the civil service rules and regulations.*
- 7. Special extenuating circumstances** *means a compelling excuse for the failure to file a matter timely that arises out of one of the following:*
 - (a) *An intentionally or fraudulently misleading action by an appointing authority or party that prevented the filing.*

- (b) *Serious physical or mental incapacity of the person that prevented the filing.*
 - (c) *Extraordinary unforeseen circumstances outside the control of the person that prevented the filing.*
- 8. **Technical complaint** means a written complaint that a technical decision (1) violated article 11, section 5, of the Michigan constitution, (2) violated a civil service rule or regulation, or (3) was arbitrary and capricious.
- 9. **Technical decision** includes each of the following individual decisions:
 - (a) **Technical classification decision** means a civil service staff decision classifying a position in the classified service.
 - (b) **Technical qualification decision** means a civil service staff decision determining the qualifications and fitness of a candidate for a position in the classified service.
 - (c) **Technical disbursement decision** means a civil service staff decision approving or disapproving disbursements for personal services.
 - (d) **Technical appointment decision** means (1) a decision of an appointing authority appointing a candidate to a position in the classified service or (2) a decision of civil service staff certifying or revoking an appointment to a position in the classified service.

B. Additional Definitions Used in This Regulation

1. **Authorized representative** means a person authorized by a party in a proceeding before the Employment Relations Board or Civil Service Commission to appear on behalf of and to represent the interests of the party in that proceeding.
2. **Dismissal for just cause** means a permanent termination of the employment relationship of an employee with status by an appointing authority for just cause. *Dismissal for just cause* does not include, for example, any of the following:
 - a. A termination of a probationary employee without status.
 - b. A layoff.
 - c. A separation from the classified service at the end of a leave of absence.

- d. A revocation of an appointment authorized in Rule 3-6.
 - e. The separation of an employee in a limited-term appointment at or before the end of the term of appointment due to lack of work or funding.
 - f. The separation of a member of the senior executive service (SES) or the senior executive management assistant service (SEMAS) at the expiration of the employee's appointment if the employee did not have status at the time of appointment to the SES or SEMAS.
3. **Contested hearing** means a quasi-judicial proceeding before a hearing officer in which the parties, after notice, may introduce documentary evidence, examine and cross examine witnesses under oath, and submit arguments.
4. **Proof of service** means a written statement filed with the Employment Relations Board certifying the date and method by which a party has served a copy of a document on another party.

4. STANDARDS AND PROCEDURES

A. Appellate Jurisdiction of Employment Relations Board

If an appeal to the Civil Service Commission is filed in any of the following matters, the Employment Relations Board exercises appellate jurisdiction on behalf of the Civil Service Commission:

1. **Grievance Appeals.** Claims of appeal and applications for leave to appeal regarding final decisions of adjudicating officers, as authorized in Rule 8-2.5.
2. **Interlocutory Appeals.** Applications for leave to appeal interlocutory orders of adjudicating officers.
3. **Technical Review Decisions.** Applications for leave to appeal regarding final technical review decisions, as authorized in Rule 8-3.4.

- 4. Labor Relations Appeals.** Applications for leave to appeal regarding a labor relations decision of the State Personnel Director or other Civil Service staff, including the following:
- a.** A decision concerning prohibited subjects of bargaining, as authorized in Rule 6-3.5.
 - b.** A decision concerning recognition and unit determinations, as authorized in Rule 6-6.1.
 - c.** A decision dismissing a petition for a unit election, as authorized in Rule 6-6.2(b).
 - d.** A decision regarding an excluded position determination, as authorized in Rule 6-6.4.
 - e.** A decision regarding an unfair labor practice claim, as authorized in Rule 6-14.3.
 - f.** Any other final labor relations decision, as authorized in Rule 6-14.3.
 - g.** A decision to impose a fine on an employee for engaging in a strike, as authorized in Rule 6-15.4(c).
 - h.** A decision to impose a fine on a labor organization for promoting, encouraging, or supporting a strike, as authorized in Rule 6-15.5(c).
- 5. Other Administrative Decisions.** Applications for leave to appeal other administrative decisions of the State Personnel Director or an adjudicating officer when authorized by the civil service rules or regulations, including a decision on a complaint regarding disbursements for personal services, as authorized in Rule 7-9.

B. General Procedure

- 1. Filing appeal.** Every appeal to the Civil Service Commission must be initiated by filing (1) a claim of appeal as of right or (2) an application for leave to appeal, whichever is authorized.
- 2. Location to file.** All appeals must be filed with the Employment Relations Board, 2nd Floor, Department of Civil Service, Capitol

Commons Center, 400 South Pine Street, P.O. Box 30002, Lansing, Michigan 48909.

Facsimile Number: (517) 335-2884

E-Mail Address: MDCS-ERB@state.mi.us

3. Perfecting appeal

- a.** An appeal to the Civil Service Commission is filed when the Board receives the claim of appeal as of right or application for leave to appeal, as provided in Regulation 8.06 [Computing Time and Filing Documents].
- b.** If an appeal is filed by authorized facsimile or e-mail, as permitted in Regulation 8.06, the original signed document and 6 copies must be delivered to the Board within 7 calendar days after the facsimile or e-mail filing. If the original signed document and 6 copies are not received within 7 calendar days, the initial facsimile or e-mail filing is deemed untimely.

- 4. Number of copies.** Whenever a party files any pleading or document with the Board, the party must file one signed original and 6 complete copies of each pleading or document. The party must also serve 1 complete copy on all other parties. In a group grievance, a party serving the group is only required to serve only 1 complete copy on the group's authorized representative.

- 5. Changing authorized representative.** If a party changes its authorized representative during the Board proceedings, the party or the new representative must notify the Board in writing of the name, business address, telephone number, facsimile number, and e-mail address of the new authorized representative. The party or new representative must serve a copy of the notice on all other parties and file a proof of service with the Board.

- 6. Dismissal of appeal.** An appeal may be dismissed by the Board or the Board's administrative officer for failure to perform properly and timely any act required by the civil service rules or regulations.

7. Proof of service

- a. Service and proof of service required.** If a party files any pleading or document with the Board, that party must (1) serve a copy of the pleading or document on all other parties and

(2) file a proof of service with the Board at the time the original pleading or document is filed with the Board.

b. Form of proof of service. A party may file a proof of service on civil service Form CS-1740, "Notice of Filing and Proof of Service to Other Parties." If a party does not use Form CS-1740, the proof of service must contain substantially all of the information required in Form CS-1740. A copy of Form CS-1740 is available from the Board and on the civil service web site.

c. Defective proof of service

(1) The Board will not accept as proof of service a cover letter or filing that indicates that other parties involved in proceedings have been copied the enclosed materials. The Board will not accept a general statement in a cover letter or filing such as "other parties of record have been served."

(2) Any party notified that it has failed to provide proper proof of service upon other parties of any document filed with the Board is allowed no more than 14 calendar days from the mailing date of the Board's notice to serve the other party and to file appropriate proof of service with the Board.

8. Technical Appeals

a. Department of Civil Service as participant. In an appeal of a technical decision, the Department of Civil Service participates in the Board proceedings as a party.

b. Service on technical appeal officer. The technical review officer who issued the decision being appealed is the authorized representative of the Department of Civil Service. An appellant must serve the technical review officer with a copy of the application for leave to appeal and all other documents.

c. Board review. The Board reviews the technical decision *de novo* and may recommend to the Commission any action authorized by law.

C. Appeal as of Right

1. Eligibility. The following may file an appeal as of right:

- a. An employee with status aggrieved by a final decision of an adjudicating officer upholding the employee's dismissal for just cause.
- b. An appointing authority aggrieved by a final decision of an adjudicating officer reinstating an employee dismissed for just cause by the appointing authority.

2. Procedure for filing claim of appeal. The following steps must be followed in an appeal as of right:

- a. **Filing deadline.** The party filing the appeal (the appellant) must submit to the Board an original and 6 copies of the claim of appeal within 28 calendar days after the date the final decision of the adjudicating officer is issued.
- b. **Contents of claim of appeal.** The claim of appeal must clearly identify the decision that is being appealed (including the name of the case, the decision number, and the Civil Service case reference number).
- c. **Signature and identification.**
 - (1) The claim of appeal must contain (1) the appellant's name, (2) employee identification number, (3) employing department or agency, (4) mailing address, (5) telephone number, (6) e-mail address, and (7) the name of the authorized representative, if any.
 - (2) If the appellant has an authorized representative, the claim of appeal must contain (1) the representative's name, (2) organization, (3) business mailing address, (4) business telephone number, (5) facsimile number, and (6) e-mail address.
 - (3) The appellant or the appellant's authorized representative must sign the claim of appeal. If a claim is filed with the Board by authorized facsimile or e-mail, an original signed claim and 6 copies must be delivered to the Board within

7 calendar days after the date of the facsimile or e-mail filing.

- d. **Service and proof of service.** The appellant must serve a copy of the claim of appeal on all other parties and submit a proof of service to the Board with the claim of appeal.

3. Record

- a. **Generally.** If a Civil Service hearing officer issued the decision on appeal, the Board will obtain the record for the case and make the record available to the parties for inspection and copying.
- b. **In arbitration cases.** If an arbitrator issued the decision on appeal as authorized in Rule 8-2.4(b)(2), the appellant must submit a copy of the arbitration decision with the claim of appeal. The appellant must certify at the time the claim of appeal is filed that the appellant has ordered a copy of the transcript of the arbitration proceedings and that the arbitrator has been requested to forward the entire record of the arbitration, including the original exhibits and briefs, to the Board.

4. Briefing schedule.

After the Board receives the record, the Board will notify the parties of the schedule for briefs and oral arguments.

a. Appellant's appeal brief.

- (1) **Contents.** The appellant must submit to the Board an original and 6 copies of an appeal brief in support of the claim of appeal. The brief must include the following:

- (A) A statement of the specific reasons why the appellant seeks to have the decision of the adjudicating officer modified or reversed. The appellant must identify one or more of the grounds for modification or reversal listed in Section 4(P)(1) on which the appellant relies.
- (B) A statement of the facts and law supporting the appellant's argument. The brief must identify with particularity the specific documents, testimony, or other facts in the record on which the appellant relies. The brief must identify with particularity the rules,

regulations, departmental work rules, or other law on which the appellant relies.

(2) Time; Proof of service. The brief must be filed within 28 calendar days after the Board issues its notice, or at such other time as the Board or the Board's administrative officer orders. The appellant must also serve a copy of the brief on all other parties and submit a proof of service to the Board with the brief.

b. Brief of responding parties. An appellee or cross-appellee may submit a response brief to the Board within 28 calendar days after the date of service of appellant's or cross-appellant's brief, or at such other time as the Board or the Board's administrative officer orders. The responding party must serve a copy of the brief on all other parties and submit a proof of service to the Board with the response brief.

c. Expedited process. On request of any party, the Board or the Board's administrative officer may expedite the appeal process by shortening the time for filing a brief or response brief, calling for immediate appearance for oral argument, or otherwise accelerating the process.

5. Cross-appeals to an appeal of right

- a.** If one party files a claim of appeal as of right, any other party may file a cross-appeal.
- b.** To perfect a cross-appeal, a cross-appellant must file an original and 6 copies each of a (1) concise statement of cross-appeal and (2) a cross-appeal brief. The concise statement and cross-appeal brief must comply with the content and filing requirements set out in Section 4(C)(4)(a) [Appellant's appeal brief], above.
- c.** A cross-appeal may be prosecuted even if the adverse party's appeal is abandoned or dismissed.

D. Application for Leave to Appeal

- 1. Application for leave authorized.** If an appeal as of right is not authorized, a party aggrieved by a final decision of an adjudicating officer may appeal to the Board upon application and leave granted, as authorized in the civil service rules and regulations.

2. Procedure for filing application for leave to appeal. The following steps must be followed in filing an application for leave to appeal:

- a. Filing deadline.** The party filing the application for leave to appeal (the “appellant”) must submit to the Board an original and 6 copies of the application and any affidavits within 28 calendar days after the date the final decision of the adjudicating officer is issued.
- b. Contents of application.** The appellant must file an application for leave to appeal containing substantially all of the information required in civil service form CS-1743, “Application for Leave to Appeal to the Employment Relations Board.” Form CS-1743 is available from the Board and on the civil service Web site. At a minimum, the application for leave to appeal must contain all of the following:

 - (1) Decision appealed.** The identity of decision that is being appealed, including the name of the case, the decision number, and the civil service case reference number. If the decision being appealed is a decision of an arbitrator, the appellant must submit a complete copy of the arbitrator’s decision with the application.
 - (2) Concise statement of material proceedings.** A concise statement of the material proceedings and findings.
 - (3) Grounds for appeal.** A sufficient explanation that establishes one or more of the following grounds for appeal:

 - (A)** The decision of the adjudicating officer is erroneous.
 - (B)** The decision violates article 11, section 5 of the Michigan constitution or is otherwise contrary to law, including the Civil Service Rules and Regulations.
 - (C)** The question presented is of major significance to the classified service.

(4) Signature and identification

(A) The application for leave to appeal must contain (1) the appellant's name, (2) employee identification number, (3) employing department or agency, (4) mailing address, (5) telephone number, and e-mail address.

(B) If the appellant has an authorized representative, the application must also contain (1) the representative's name, (2) organization, (3) business mailing address, (4) business telephone number, (5) facsimile number, and (6) e-mail address.

(5) The appellant or the appellant's authorized representative must sign the original copy of the application for leave to appeal. If the application is filed by authorized facsimile or e-mail, an original signed application and 6 copies must be delivered to the Board within 7 calendar days after the date of the facsimile or e-mail filing.

c. Service and proof of service. The appellant must serve a copy of the application for leave to appeal on all other parties and submit a proof of service to the Board with the application. In an appeal of a technical decision, a copy of the application for leave to appeal must be served on the technical review officer who issued the technical decision.

3. Response to application for leave. Any other party to the proceeding below may file a written response to the application for leave to appeal. The responding party must file an original and 6 copies of a response and any affidavits within 28 calendar days after service of appellant's application for leave to appeal. The responding party must serve a copy of the response on all other parties and must submit proof of service to the Board.

E. Summary Dismissal of Claim of Appeal or Application for Leave to Appeal

1. Summary Dismissal Authorized. As authorized in Rule 8-7.4, before the Board considers a claim or application, the Board's administrative officer may recommend to the Commission that the claim or application be summarily dismissed for any of the following reasons:

- a. **Not authorized.** The appellant is not authorized to file the appeal.
- b. **Lack of jurisdiction.** The Department of Civil Service or the Civil Service Commission lacks jurisdiction over a necessary party or over the subject matter of the appeal.
- c. **Untimeliness.** The claim of appeal or application for leave to appeal is untimely.
- d. **Another action pending.** Another civil service action has been initiated between the same parties involving substantially the same matter.
- e. **Barred by prior claim.** Substantially the same matter was adjudicated to finality in the civil service system in another action between the same parties.

- 2. **Final Action by Commission.** A recommendation for summary dismissal by the Board's administrative officer is transmitted directly to the Commission for review and final action.

F. **Consideration of Application for Leave to Appeal**

If the Board's administrative officer does not recommend summary dismissal of the application for leave to appeal to the Commission, the Board shall review the application and issue a recommendation to the Commission. The Board shall review the merits for the grounds of the appeal and make a recommendation to the Commission

- 1. **Grounds for Granting Application.** The Board may recommend that the Commission grant the application for leave to appeal if the Board, in its discretion, determines that the appellant :
 - a. The decision of the adjudicating officer is erroneous.
 - b. The decision violates article 11, section 5 of the Michigan constitution or is otherwise contrary to law, including the Civil Service Rules and Regulations.
 - c. The question presented is of major significance to the classified service.

2. Recommendation.

- a. **Denial of Application.** If the Board recommends denying the application for leave to appeal, the Board shall issue the recommendation to the Commission for final action.
- b. **Grant of Application.** If the Board recommends granting the application for leave to appeal, the Board shall issue its recommendation in the form of a decision granting leave. The Board's recommendation to grant leave shall be reviewed by the Commission only at the time the Commission reviews the Board's final recommendation on the merits of the appeal.

G. Board Procedure after Grant of Leave to Appeal

If the Board issues a decision granting an application for leave to appeal, the following procedures apply:

1. Record

- a. **Generally.** Unless the parties have stipulated to a record, the Board will obtain the record for the case from the applicable Civil Service division and make the record available to the parties for inspection and copying.
- b. **Record in arbitration cases.** Within 14 calendar days after the Board has granted leave to appeal an arbitrator's decision, the appellant must certify that the appellant has ordered a copy of the transcript of the arbitration proceedings and that the arbitrator has been requested to forward the entire record of the arbitration, including the original exhibits and briefs, to the Board.

- 2. **Briefing schedule.** Upon receipt or settlement of the record, the Board will notify parties of the schedule for briefs and oral arguments, if any.

3. Appellant's appeal brief.

- a. **Contents.** The appellant must submit to the Board an original and 6 copies of an appeal brief. The brief must include the following:

- (1) A statement of the specific reasons why the appellant seeks to have the decision of the adjudicating officer modified or reversed. The appellant must identify one or more of the grounds for modification or reversal listed in Section 4(P)(1) on which the appellant relies.
 - (2) A statement of the facts and law supporting the appellant's argument. The brief must identify with particularity the specific documents, testimony, or other facts in the record on which the appellant relies. The brief must identify with particularity the particular rules, regulations, departmental work rules, or other law on which the appellant relies.
 - b. **Time; Proof of service.** The appellant must submit an original and 6 copies of appellant's appeal brief within 21 calendar days after the date of the Board's notice. The appellant must serve a copy of its brief on all other parties and must submit a proof of service to the Board.
4. **Cross-appeals to a granted application for leave to appeal**
- a. If the Board grants one party's application for leave to appeal, any other party may file a cross-appeal.
 - b. To perfect a cross-appeal, a cross-appellant must file an original and 6 copies each of a (1) concise statement of cross-appeal and (2) a cross-appeal brief. The concise statement and cross-appeal brief must comply with the content and filing requirements set out in Section 4(G)(3), above.
 - c. A cross-appeal may be prosecuted even if the adverse party's appeal is abandoned or dismissed.
5. **Response briefs.** An appellee or cross-appellee may file an original and 6 copies of a response brief to an appeal or cross-appeal brief within 21 calendar days after the date of the appellant's or cross-appellant's appeal brief. A party filing a response brief must serve a copy of the response brief on all other parties and must submit a proof of service to the Board with the response brief.
6. **Oral arguments.** If the Board, in its discretion, determines that oral argument may be helpful, the Board shall schedule oral arguments. If the Board schedules oral arguments, the parties may appear and argue as provided in Section 4(O), below.

7. **Remand.** The Board may, at any time, remand a case to the adjudicating officer with directions for further action. Unless the Board expressly retains jurisdiction, a case is remanded without prejudice to the filing of a new application for leave to appeal by any party from any further final decision of the adjudicating officer. An order by the Board to remand a case is not appealable to the Commission as a final recommendation of the Board.

H. Extensions of Time

1. **Incomplete Filing.** If a party in good faith files a timely claim of appeal, application for leave, cross-appeal, brief, or other pleading that does not substantially comply with the civil service rules and regulations, the Board's administrative officer shall issue a notice of deficiency to the party and allow additional time, not to exceed 14 calendar days, within which the party must correct the deficiency.
2. **Extension for Filing**
 - a. **Stipulation.** The parties to an appeal may stipulate to an extension of time within which to file a claim, application, cross-claim, brief, or other pleading. Any such stipulation must be in writing and received by the Board *before* the expiration of the original time limit. A stipulated extension cannot exceed 28 calendar days,
 - b. **Advance request.** If the parties cannot stipulate to an extension of time, a party may request an extension in writing with the Board. Any request for an extension must be filed *before* the expiration of the required time for filing. The requesting party must serve a copy of the request on all other parties and submit a proof of service with the request. The Board's administrative officer may grant an extension of time within which to file a claim, application, cross-claim, response, or other pleading if the administrative officer finds sufficient justification for the extension.
 - c. **Late Filing**
 - (1) To request permission to file a late claim, application, cross claim, response, or other pleading after the time permitted in the civil service rules or regulations, a party may file a motion to permit late filing.

- (2) The moving party must file an original and 6 copies of the motion and any supporting affidavits with the Board. The party must serve a copy of the motion and affidavits on all other parties and submit a proof of service to the Board with the motion.
- (3) Any other party may file an original and 6 copies of a response to the motion within 21 calendar days after service of the motion. A copy of the response must be served on all other parties and a proof of service must be submitted to the Board with the response.
- (4) The motion is evaluated under the standards set out in Regulation 8.06 [Computing Time and Filing Documents].
 - (A) If the motion is filed 28 or fewer calendar days after the expiration of the time limit, the Board's administrative officer shall determine if good cause exists to permit a late filing.
 - (B) If the motion is filed between 29 days and one year after the expiration of the time limit, the Board shall determine if special extenuating circumstances exist to permit a late filing.
 - (C) A motion filed over one year after the expiration of the time limit cannot be accepted.

I. Effect of Filing Claim or Application

1. After Final Decision of Adjudicating Officer

- a. **Exclusive Jurisdiction.** Once an appeal or application for leave to appeal from a final order of an adjudicating officer is perfected, the Board exercises exclusive jurisdiction over the matter.
- b. **Stay of Final Grievance Decision.** Under rule 8-2.6(a), a grievance decision of an adjudicating officer is final and binding on the parties 29 calendar days after the date the decision is issued, unless either (1) the decision provides for a later effective date or (2) a party files a further appeal to the Civil Service Commission within 28 calendar days after the date the decision is issued.

- (1) Unless all the parties agree otherwise, during the 28-day period following the issuance of the final decision of the adjudicating officer, the status of the parties and their relationships in effect at the time of the decision remain unchanged.
 - (2) If a party files a timely appeal and serves all other parties with a copy of the appeal within the 28-day period, the effective date of the decision is automatically stayed pending further order of the Board or Civil Service Commission.
 - (3) If none of the parties intends to appeal a final decision of an adjudicating officer, the parties may implement the decision at any time.
 - (4) If, within 28 calendar days after the date of the final decision of the adjudicating officer, none of the parties has filed a claim of appeal or an application for leave to appeal and served all the other parties, the decision is effective on the 29th day and the parties are required to promptly comply with its terms.
 - (5) If a motion to reinstate the stay is filed at the same time as a late claim or application is filed and the late filing is accepted under Section 4(H)(2)(c), the Board may reinstate the stay if it finds that it is in the interests of justice to do so.
- c. **Reinstatement or restoration of base pay.** Under rule 8-2.6(b), if a final grievance decision of an adjudicating officer orders an appointing authority to reinstate a grievant who had been dismissed for cause, the appointing authority, as a condition of further appeal to the Civil Service Commission, shall temporarily either (1) reinstate the grievant or (2) restore the grievant's base pay and medical, dental, and vision group insurance. In such circumstance, the appointing authority must comply with the applicable provisions in Regulation 8.01 [Grievance and Grievance Appeal Procedures].
- d. **Unit representation determination; stay.** If the state employer or a labor organization files a timely application for leave to appeal a unit determination decision of the state

personnel director, the director's decision is stayed pending further order of the Board or Commission.

2. Before Final Decision of Adjudicating Officer

- a. Interlocutory Appeal.** A party may file an application for leave to appeal an interlocutory order of an adjudicating officer before a final decision is issued. The application for interlocutory appeal must be filed within 14 calendar days after the date of the adjudicating officer's interlocutory order. The appellant must serve one original and 6 copies of the application with the Board. A copy of the application must be served on all other parties and proof of service must be submitted to the Board with the application.
- b. Application for interlocutory appeal.** The application for leave to appeal from the interlocutory order must contain a concise statement of the material proceedings, allege grounds for appeal, and establish one of the following conditions:

 - (1) Hearing Officer Certification.** The adjudicating officer has certified that the interlocutory order involves a controlling question of law, civil service rule, or procedure as to which there is substantial ground for difference of opinion and that an immediate appeal will materially advance the ultimate resolution of the case.
 - (2) Irreparable Harm.** If the interim relief requested by the appellant in the interlocutory appeal is not granted, the appellant will suffer irreparable harm by awaiting final decision in the case.
- c. Response.** Any other party may file one original and 6 copies of a response to the application for interlocutory appeal within 14 calendar days after the date the application is filed. A party filing a response must serve a copy of the response on all other parties and submit a proof of service to the Board with the response.
- d. Stay of proceedings.** The proceedings before the adjudicating officer are not stayed by the filing of the interlocutory appeal unless the appellant requests a stay from the adjudicating officer and the adjudicating officer expressly orders a stay.

J. Special Procedures

1. **Expedited Procedure.** The Board may shorten the time for filing a response, dispense with briefs, require simultaneous briefs, call for immediate appearance for oral argument, or otherwise expedite any proceeding. If a matter is expedited, the Board shall set a time for response and notify the parties.
2. **Emergency Appeal.** Upon the showing of due diligence and that irreparable harm will result if the normal practice on claim of appeal or leave to appeal is followed, and upon reasonable notice to all parties and opportunity for their response, the Board may grant a party's motion for emergency relief or for appearance before the Board at its next meeting. A party filing a motion for emergency relief must serve a copy of the motion on all other parties no later than the day the motion is filed and submit proof of service with the motion.
3. **Motions.** All motions, other than those justifiably made at oral argument, must be made in writing to the Board, must briefly state the relief sought, and must be accompanied by a brief or affidavits setting forth the grounds for the action requested. The moving party shall serve a copy on all other parties and submit proof of service to the Board with the filing. All motions are decided upon the papers filed with the Board, unless the Board in its discretion calls for oral argument or otherwise indicates to the contrary.
4. **Joinder.** Upon motion of a party, or upon the Board's own motion, parties may be added, dropped, or substituted at any stage of the proceedings, upon such terms as the Board deems appropriate.
5. **Consolidation.** Upon motion of a party, or upon the Board's own motion, any number of proceedings before the Board may be consolidated when there are similar or interrelated facts and circumstances or common issues of law exist, provided no substantial right of any party is prejudiced by such consolidation.
6. **Intervention.** Upon application that establishes sufficient reason, the Board may grant permission to a person, organization, employer, or the Department of Civil Service to intervene as a party or appear *amicus curiae* in proceedings before the Board. Any application for intervention must be in writing and must set forth the facts upon which the claim for intervention is based. A copy must be served on

all parties and a proof of service must be submitted to the Board with the application.

7. Group appeals

- a.** In a group appeal, a claim of appeal, the application for leave to appeal, response, or other pleading may be signed by an authorized representative on behalf of the group.
- b.** At the time a claim of appeal, application for leave to appeal, or response is filed, the Board must be provided with the name, mailing address, and telephone number of each person participating as a party in a group appeal.
- c.** In a group appeal, all correspondence between the Board and the parties is with the authorized representative. If one or more parties does not have an authorized representative, or if there is more than one authorized representative, the Board shall issue appropriate orders for the conduct of the proceedings.

K. Relief

In any matter before it, the Board may recommend any relief within the Commission's authority under the Constitution and the Civil Service Rules and Regulations. This relief includes, but is not limited to, recommending that the Commission affirm, reverse, or modify in whole or in part any decision or order of an adjudicating officer or remand the matter for further proceedings.

L. Record

- 1. Record after contested hearing.** In an appeal of a decision decided after a contested hearing, the appeal is heard on the original papers and exhibits certified by the adjudicating officer and the transcript, if there was a recorded hearing. That part of the original record in the possession of the Department of Civil Service or an arbitrator must be transmitted promptly to the Board upon request. The Board or the parties may seek a stipulation of facts instead of providing a transcript. Where a substantial part of the transcript has no bearing on the appeal, the entire transcript is not required. However, nothing bars a party from obtaining and submitting all or any portion of the transcript.

2. **Record with no contested hearing.** In an appeal of a final technical review decision or other decision decided without a contested hearing, the appeal is heard on the original papers and exhibits transmitted to the Board by the adjudicating officer. These include all original documents filed by the parties and any supplemental documents used by the adjudicating officer in rendering a decision. That part of the original record in the possession of the Department of Civil Service must be transmitted promptly to the Board upon request.
3. **Transcript not available.** When a stenographic record was made but a transcript cannot be created, the parties may meet with the adjudicating officer to settle the record.
4. **Excerpts as exhibits.** Complete books, pamphlets, collective bargaining agreements, and other large documents are not made part of the record on appeal if excerpts are adequate.
5. **Definition of Record**
 - a. **When contested hearing held.** The record before the Board in any matter in which a contested hearing was held, and to which the briefs are addressed, includes the following:
 - (1) The grievance record, including grievances, complaints, answers, investigative or disciplinary reports, and material correspondence at the prior steps of the grievance process.
 - (2) The pleadings, papers, briefs, and correspondence submitted by the parties to the adjudicating officer.
 - (3) Filings, opinions, decisions, and orders of the adjudicating officer.
 - (4) Certified transcripts of proceedings.
 - (5) Exhibits admitted into evidence by the adjudicating officer or the Board.
 - (6) Things judicially noticed.
 - (7) Any claim of appeal, application for leave to appeal, or cross claim filed by a party with the Board.

- (8) Briefs, supporting documents, and affidavits filed by a party with the Board.
- b. **When no hearing held.** If no contested hearing was held, the record before the Board after a grant of leave to appeal to which the briefs are addressed includes the following:
 - (1) The pleadings, papers, briefs, and exhibits submitted by the parties to the adjudicating officer.
 - (2) Other documents relied upon by the adjudicating officer in rendering a decision.
 - (3) Filings, opinions, decisions, and orders of the adjudicating officer.
 - (4) Any claim of appeal, application for leave to appeal, or cross claim filed by a party with the Board.
 - (5) Briefs, supporting documents, and affidavits filed by a party with the Board.
6. **Stipulations.** The parties may stipulate in writing regarding any matter pertaining to the appeal, including the composition of the record. However, all stipulations must be consistent with civil service rules and regulations, including these appeal procedures, and are subject to review and acceptance by the Board.
7. **Recording by Party.** A party to a Board proceeding that is not required to be stenographically recorded may employ at its expense a certified stenographic, audio, or video reporter to record the proceeding if the Board determines that the recording will not be unduly disruptive. The party must request approval of the Board at least 14 calendar days before the proceeding.

M. Supplementing the Record and New Evidence

- 1. Record Closed.** Except for pleadings filed and decisions issued on appeal to the Board, the record is closed at the time the final decision of the adjudicating officer is issued.
- 2. Supplementing the Technical Record.** In an appeal of a final technical review decision or other decision decided without a contested hearing, the Board may supplement the technical record on its

own motion or on motion of a party, if the Board determines that the technical record is inadequate.

3. **New Evidence after Contested Hearing.** In an appeal of a decision decided after a contested hearing, the Board shall not accept new evidence except upon its own motion or upon prior written request of a party for a legally sufficient reason. When the Board, upon its own motion or at the request of a party, allows new evidence:
 - a. It may hear the evidence itself.
 - b. It may assign the matter to the Chair, other Board member, or an adjudicating officer to hear the evidence and return a record.
 - c. It may order depositions or interrogatories.
 - d. It may remand the case to an adjudicating officer to hear the evidence and render a new or supplemental decision.

N. Dismissal of Appeals

1. **Authority.** No application or appeal can be dismissed except by (1) the Board based upon motion, including its own, (2) the Board's administrative officer, as authorized in Rule 8-7.4, or (3) stipulation of the parties.
2. **Motion to Dismiss.** A party may file with the Board a motion to dismiss for sufficient cause, including grievability, jurisdiction, timeliness, non-conformance to procedure, lack of prosecution, and frivolous appeal. A copy of the motion must be served on all other parties and a proof of service must be submitted to the Board with the motion. The other parties may file an answer to the motion within 28 calendar days after service of the motion. A copy of an answer must be served on all other parties and a proof of service submitted to the Board with the answer.

The Chair may suspend the necessity of further filings and place the motion before the Board or may grant or deny the motion subject to Board review upon completion of filings in the appeal.

3. **Withdrawal.** A party who has filed an appeal may withdraw the appeal by filing a written request and obtaining approval of the Board's administrative officer. A copy must be served on all other

parties and proof of service submitted to the Board with the motion to withdraw.

O. Oral Argument

1. **Chair.** The Chair of the Board shall preside at oral argument. If the Chair is absent, the Vice Chair shall preside.
2. **When Heard.** Oral argument must be heard on an appeal of right. Oral argument upon appeal following grant of an application for leave to appeal, or in any other case, may be scheduled at the discretion of the Board.
3. **Procedure.** The parties are heard in public session in the order established on the Board agenda. The Board shall give notice of the oral argument to each party or party's authorized representative. Unavailability of a party who has an authorized representative is not cause for postponement of oral argument.
 - a. A request to postpone before the day of oral argument may be submitted to the Board's administrative officer upon written motion, stating good cause and setting out the position of all other parties relative to the request to postpone. A copy of the motion must be served on all other parties and proof of service submitted to the Board with the motion.
 - b. The Board's administrative officer may postpone or reschedule oral argument based on administrative considerations.
 - c. A request to postpone on the day of oral argument may be submitted orally to the Board setting forth good cause. The Board may postpone, adjourn, or reschedule oral argument based on administrative considerations upon request or its own motion.
4. **Time Limitation.** Except as otherwise directed by the Board, each party may address the Board for a maximum of 15 minutes. In a group grievance, one person may address the Board for a maximum of 15 minutes on behalf of all members of the group. An appellant may offer rebuttal argument for a maximum of 5 minutes. The Board may extend the time for any party on request or at its own discretion.
5. **Contemptuous Conduct.** Contemptuous conduct during the claim of appeal, application for leave to appeal, cross-claim, or at oral

argument is grounds for exclusion from the oral argument hearing and is grounds for other appropriate disqualification.

P. Recommendations

- 1. Grounds for Modification or Reversal.** The Board may recommend to the Civil Service Commission modifying or setting aside a decision or order of an adjudicating officer if substantial rights of the appellant have been prejudiced because the decision or order is any of the following:
 - a.** In violation of, or an erroneous interpretation of law, including the civil service rules and regulations.
 - b.** In excess of the authority or jurisdiction of the adjudicating officer.
 - c.** Made upon unlawful procedure resulting in material prejudice to a party.
 - d.** Arbitrary and capricious.
 - e.** A clear abuse or unwarranted exercise of discretion.
 - f.** Affected by other substantial and material error of law.
 - g.** For that portion of the decision based on an contested hearing, not supported by the preponderance of competent, material, and substantial evidence on the whole record.
- 2. Interim Board Decisions.** Board decisions and orders, including remand orders when the Board retains jurisdiction, which are procedural or not a final recommendation to the Civil Service Commission are effective when issued by the Board, unless the decision or order provides otherwise. A Board decision or order issued before a final recommendation does not require prior Civil Service Commission review and approval, but is reviewed by the Commission when it reviews the final Board recommendation.
- 3. Final Recommendation.** When the Board concludes its review, the Board must issue a final recommendation to the Civil Service Commission. The Board must recommend that the Commission affirm, reverse, or modify, in whole or in part, the decision or order of the adjudicating officer. After the Board issues a final recommendation

and the time for requesting reconsideration expires, the Civil Service Commission automatically reviews the recommendation and issues a final Commission decision without further required action by any party.

4. **Conference.** Decisions of the Board and Commission are made in a conference from which all persons except the Board, Commission and its staff are excluded. The Board or Commission may meet and confer in person, by telephone or other electronic means, or by correspondence.
5. **Majority.** Decisions of the Board must be made by majority vote of a quorum of the Board.
6. **Division.** When only two members of the Board participate and they are divided as to the ultimate decision, each member shall make a separate written recommendation to the Commission.
7. **Dissent.** Decisions of the Board are unanimous unless a dissent is indicated.
8. **Confidentiality.** Except for the record and published decisions of the Employment Relations Board or the Civil Service Commission, all files of the Board and Commission and its members relating to appeals, including, but not limited to, research, staff analyses, draft decisions, correspondence among the Board, Commission, and staff, and the discussions of the Board and Commission are confidential and not open to the public.
9. **Notice.** All decisions and orders of the Board must be forwarded to the parties by the Board by United States or interdepartmental mail to the last known address of the parties and their representatives or as otherwise deemed appropriate.
10. **Further appeal to the courts.** The final decision of the Civil Service Commission is subject to review in the Michigan circuit court. A petition for review must be filed within 60 calendar days after the date the final Commission decision is issued. A petition for review must name the Michigan Civil Service Commission as a respondent and must be served on the Michigan Civil Service Commission at its main office, 400 South Pine Street, Lansing, Michigan 48933. (See Michigan Court Rule 7.104(d) and Michigan Compiled Laws §§ 24.301-24.306.)

- 11. Awards.** All awards of back pay and other benefits, even when not expressly stated, are subject to civil service rules and regulations, and, where appropriate, are subject to the following:
- a.** Deduction of earnings in other employment or self-employment, but not including earnings from previously-approved supplemental employment.
 - b.** Deduction of benefits received from employer contributory income protection insurance.
 - c.** Deduction of benefits received under the following government assistance programs:
 - (1)** Workers' Compensation
 - (2)** Unemployment Compensation
 - (3)** Social Security
 - (4)** Social Welfare

Q. Post-Decision Procedures

- 1. Reconsideration.** A party may request that the Board reconsider a recommendation to the Civil Service Commission. An original and 6 copies of a request for reconsideration must be filed with the Board within 14 calendar days after the date of mailing of the Board recommendation and must be accompanied by a brief in support of the request. A copy of the request must be served on all other parties and a proof of service must be submitted to the Board with the request. The other parties may submit a response within 14 calendar days after the filing of the request for reconsideration. A copy of the response must be served on all other parties and a proof of service submitted to the Board with the response. A request or response that is filed late will not be considered.
- 2. Enforcement.** If a party fails to comply with an order of the Employment Relations Board or the Civil Service Commission, any other party may request a further order of the Civil Service Commission compelling compliance. If the Commission issues a compliance order, every party must promptly comply and the State Personnel Director shall take all necessary steps to compel compliance. If a party fails to comply with a compliance order of the

Commission, the State Personnel Director or other party may apply for further relief to the appropriate circuit court or court of claims.

CONTACT

Questions regarding this Regulation should be directed to the Employment Relations Board, Department of Civil Service, P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909. Telephone: (517) 335-5588. Facsimile: (517) 335-2884. E-mail: MDCS-ERB@state.mi.us.

NOTE: Regulations are issued by the State Personnel Director under authority granted in the State of Michigan *Constitution* and the *Michigan Civil Service Commission Rules*. Regulations that implement Commission Rules are subordinate to those Rules.